

ROBB EVANS & ASSOCIATES LLC

Receiver of the Assets of

DebtWorks, Inc., and

Andris Pukke

11450 Sheldon Street

Sun Valley, California 91352-1121

Telephone No.: (818) 768-8100

Facsimile No.: (818) 768-8802

Federal Trade Commission v. Ameridebt, Inc., et al.

CASE No. SACV 07-908 JVS (RNBx)

**Order Granting in Part Receiver's Motion for Review of Magistrate
Judge's Ruling regarding Receiver's Motion to Enforce Compliance
with Deposition Subpoenas for Depositions of
Pamela Pukke and Anthony Mock**

Filed November 30, 2007

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SACV 07-908 JVS (RNBx) Date November 30, 2007

Title Federal Trade Commission v. Ameridebt, Inc., et al.

Present: The Honorable James V. Selna

Karla J. Tunis

Sharon Seffens

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Lesley Anne Hawes

Catalina Manzano

Proceedings: (In Chambers) Order Granting in Part Receiver's Motion for Review of Magistrate Judge's Ruling regarding Receiver's Motion to Enforce Compliance with Deposition Subpoenas for Depositions of Pamela Pukke and Anthony Mock (Fld 8-29-07)

Robb Evans & Associates, LLC, as Receiver over the assets of Andris Pukke and Debtworks, Inc. ("Receiver"), moves this Court to review Magistrate Judge Hon. Robert N. Block's ruling of August 14, 2007 (Docket No. 2), which disposed of Receiver's motion to compel subpoenaed depositions of and document production by Pamela Pukke ("Pukke") and Anthony Mock ("Mock") and for attorney's fees and costs ("Motion for Enforcement and Sanctions"). Pukke and Mock oppose the motion.

I. Background

On May 29, 2007, Receiver, pursuant to its powers to investigate property under its control, issued subpoenas duces tecum to depose Pukke and Mock and requesting that they produce documents. The depositions were scheduled for July 18 and 19, 2007. Pukke and Mock failed to appear for the depositions, and Receiver filed the Motion for Enforcement and Sanctions on August 7, 2007. Magistrate Judge Block denied the motion on August 14, 2007. Receiver then took the depositions of both Pukke and Mock, on September 17 and 18, 2007, respectively, and deponents produced the requested documents. However, during the time between the initially noticed July deposition date and the September date on which the deposition ultimately took place, Pukke sold one of the properties (*viz.* 1424 Serenade Terrace, Corona del Mar, California) that the Receiver had intended to investigate by way of the depositions and document requests. (Reply Br., pp. 5-6; *see*, Decl. Caris, Oct. 9, 2007, ¶ 4, quoting Pukke deposition testimony.)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SACV 07-908 JVS (RNBx) Date November 30, 2007

Title Federal Trade Commission v. Ameridebt, Inc., et al.

II. Review of Magistrate Judge Ruling

Receiver's request to compel depositions and document production is now moot, given that the depositions and production have occurred. Irrespective of whether or not the Magistrate Judge's August 14, 2007 ruling was correct, since the issue is now moot, this Court does not have the power to review it.

III. Attorney's Fees and Costs

Attorney's fees and costs may be awarded to the party making a motion to compel even "if the disclosure or requested discovery is provided after the motion was filed." Fed. R. Civ. P. 37(a)(4) In addition, the Court has the inherent power to award attorney's fees as a sanction for litigation misconduct.

The Supreme Court has recognized that a court has the inherent power to assess fees and sanctions against parties. Chambers v. Nasco, Inc., 501 U.S. 32, 43 (1991). In the Ninth Circuit, conduct that is "tantamount to bad faith" is sanctionable. B.K.B. v. Maui Police Department, 276 F.3d 1091, 1108 (9th Cir. 2002) (quoting Roadway Express, Inc. v. Piper, 447 U.S. 752, 757 (1980)). "[B]ad faith does not require that the legal and factual basis for the action prove totally frivolous[.]" but rather "where a litigant is substantially motivated by vindictiveness, obduracy, or mala fides" sanctions may be appropriate. Fink v. Gomez, 239 F.3d 989, 992 (9th Cir. 2001) (internal quotations and citation omitted). Furthermore, sanctions are available for several kinds of willful behavior, including frivolousness, harassment, or improper purpose. Id. at 994.

Here, Pukke and Mock not only failed to comply with the deposition subpoenas by failing to appear at the first scheduled deposition, but also sold one of the properties subject to investigation before the later deposition date. (Opening Br., p. 4; Decl. Caris, Oct. 9, 2007, ¶¶ 3-4.) In the context of the Receiver's investigation and the deposition schedule, the sale was "tantamount to bad faith." The Court agrees with Magistrate Judge Block's assessment that "it was incumbent on the deponents to either arrange with the Receiver's counsel for different deposition dates or move to quash the subpoenas rather than simply disobey them." (Order, August 14, 2007, p. 1.) On these facts, the Receiver is entitled to an award of fees both under either Rule 37(a)(4) or as a sanction for litigation misconduct. Accordingly, the Court awards Receiver reasonable attorney's fees and costs incurred in connection with the Motion for Enforcement and Sanctions.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SACV 07-908 JVS (RNBx) Date November 30, 2007
Title Federal Trade Commission v. Ameridebt, Inc., et al.

IV. Conclusion

For the reasons discussed above, the Court declines to review Magistrate Judge Block's ruling based on mootness, but awards Receiver reasonable attorney's fees and costs incurred in connection with that motion. The Receiver shall file a declaration with evidence of such fees and costs on or before December 17, 2007. The Court further orders the Scheduling Conference set for December 17, 2007 in this matter vacated.

0 : 00
Initials of Preparer kjt